

U. S. TREASURY DEPARTMENT
Internal Revenue Service
Washington 25, D. C.

Alcohol and Tobacco Tax Division
Industry Circular No. 55-24

August 26, 1955

Proposed Standards of Fill for Malt Beverages

To members of the brewing industry
and others concerned:

1. Section 5(e) of the Federal Alcohol Administration Act prohibits any distiller, brewer or other producer, wholesaler or importer, directly or indirectly, from introducing into interstate or foreign commerce any distilled spirits, wine or malt beverages which are not bottled, packaged and labeled in conformity with regulations prescribed by the Secretary after notice and hearing "with respect to packaging, marking, branding and labeling and size and fill of container", as will prohibit deception of the consumer with respect to such products or the quantity thereof.

2. In December 1954, after the appearance on the market of the four-fifths quart bottle and the ten-ounce can, the latter accompanied by advertising referring to it as the "Big Ten", I received a request, submitted on behalf of a substantial number of brewers, urging me to call a public hearing to consider the adoption of standards of fill for malt beverages pursuant to the above-mentioned statutory authority.

3. Following the receipt of this request and after careful consideration of the advisability of holding a hearing to consider the adoption of standards of fill for malt beverages, I decided the matter was of sufficient importance to justify a hearing to consider the question on its merits. Accordingly, a notice of a hearing to be held on June 1, 1955, was published in the Federal Register, issue of May 7, 1955.

4. Pursuant to the notice a hearing was held on June 1 and 2, 1955, and then recessed to July 12, 1955, on the request of counsel for one of the brewers trade organizations to hear additional testimony on the subject, and was finally concluded on July 13, 1955. During the course of this hearing extensive testimony was received on this question.

5. A great deal of the testimony presented at the hearing by both proponents and opponents of the proposal to adopt standards of fill dealt with the economic effects such standards would have on the brewing industry, and while I am deeply concerned with these economic considerations I feel that under the statute my decision on this matter must be based solely on whether or not standards of fill are necessary to prevent consumer deception.

6. I have carefully reviewed the record and find that the evidence of consumer deception is inconclusive in light of the long-established and widespread consumer acceptance of certain odd sizes (the 6, 8 and 11

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ounce containers) in various markets of the country, as shown by the record, which would tend to negate any inference that they are inherently deceptive. In fact, in some parts of the country one of these odd sizes (the 11 ounce bottle) might be said to be the standard container since it outsells all other sizes combined.

7. I have also reached the conclusion that any abuses in the marketing of the so-called odd size containers may be prevented by a stringent enforcement of the advertising and labeling provisions of the malt beverage regulations.

8. In view of these considerations, I have concluded that the establishment of standards of fill for malt beverages is not warranted at this time.

9. Inquiries in regard to this industry circular should refer to the number thereof and the symbols O:AT:B.

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Director, Alcohol and Tobacco Tax Division

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